HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

W.A. NOs.1336 and 1338 of 2005

W.A. No.1336 of 2005:

Between:

Paruchuri Ratnakar Rao, S/o late Venkatnarasaiah, R/o.1-7-1170, Advocates' Colony, Hanamkonda, Warangal District ... Appellant/Petitioner

and

The State of Andhra Pradesh, rep. by its Principal Secretary, Revenue (UC-II) Department, Secretariat, Hyderabad and three others ... Respondents

W.A. NO.1338 of 2005:

Between:

Paruchuri Shiva Rao, S/o late Venkatnarasaiah, R/o 1-7-1170, Advocates' Colony, Hanamkonda, Warangal District ... Appellant/Petitioner

and

The State of Andhra Pradesh, rep. by its Principal Secretary, Revenue (UC-II) Department, Secretariat, Hyderabad and three others ... Respondents

:: COMMON JUDGMENT ::

Counsel for the appellant/petitioner in both the appeals : Sri B. Adinarayana Rao

Counsel for respondents in both the appeals : Government Pleader for Assignment

Date: -6-2006

Per G.Bhavani Prasad, J

Whether the purchaser of land declared surplus under the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act') can claim benefit of the policy contained in G.O.Ms.No.733, Revenue (UC-II) Department, dated 31-10-1988 and seek exemption under Section 20 of the Act is the question which arises for determination in these appeals filed by the appellant against orders dated 7-7-2005 passed by the learned Single Judge in Writ Petition Nos.14662 and 14675 of 2005 respectively whereby he refused to quash final statement issued by Special Officer-cum-Competent Authority, Urban Land Ceiling, Warangal (hereinafter described as 'Special Officer') under Section 9 and notifications issued under Section 10 (3) and (6) of the Act in respect of land comprised in Survey No.182/4 belonging to late Sri V. Lakshmaiah.

The appellants claim to have purchased 3448.50 square yards of land comprised in Survey No.182/4 situated at Shayampet, Hanamkonda Mandal, Warangal District from V. Veera Swamy @ Kotaiah, V. Veeramallu, V. Veeresham and V. Laxminarayana, all sons of V. Laxmaiah, V. Prabhakar S/o.Veera Swamy @ Kotaiah and V. Mallesham S/o.V. Veeramallu by registered sale-deeds dated 26-8-

1997. In the year 2005, they filed separate writ petitions alleging therein that in the second week of June, 2005, the officials of the office of the Mandal Revenue Officer, Hanamkonda (for short 'the MRO') came to their land and attempted to take measurements. On being questioned, they told that the land had been declared surplus by the Special Officer and, they were taking measurements of the land, as per the directions of District Collector, Warangal and the MRO. Immediately thereafter, the appellants approached the Special Officer and came to know that V. Lakshmaiah (father and grandfather of their vendors) had filed declaration under Section 6 of the Act in respect of the agricultural lands admeasuring

Ac.0-04 guntas in Survey No.74/C, Ac.0-04 guntas in Survey No.74/D, Ac.0-13 guntas in Survey No.83/B, Ac.0-14 guntas in Survey No.83/C, Ac.0-28 guntas in Survey No.169/C, Ac.1-02 guntas in Survey No.182/4 and Ac.0-02 guntas in Survey No.180/1 in total Ac.5-04 guntas situated at Shayampet, Hanamkonda Mandal, Warangal District. He gave out that he had four major sons at the time of coming into force of the Act. After considering the same, the Special Officer issued final statement on 16-9-1981 under Section 9 of the Act and declared that the land owner, namely, V. Lakshmaiah was holding 18,328 square metres of excess land. This was followed by notification issued under Section 10 (3) of the Act whereby an extent of 889 square metres in Survey No.169/C, 744 square metres in Survey Nos.74/C and 74/D, 2723 square metres in Survey Nos.83/8 and 83/C, 5813 square metres in Survey No.181/4 and 8159 square metres in Survey No.182/4 was declared as surplus land. After sometime, the Special Officer issued notification dated 24-10-1992 under Section 10 (6) of the Act. The possession of the excess land is said to have been taken on 16-11-1998.

In the writ petitions filed by them, the appellants prayed for quashing of the final statement dated 16-9-1981 and notifications

issued under Section 10 (3) and (6) by contending that in terms of G.O.Ms. No.733, dated 31-10-1988, the land belonging to late Sri V. Lakshmaiah is liable to be exempted. They pleaded that the land in question was neither 'urban land' within the meaning of Section 2 (o) nor it could be treated as 'vacant land' within the meaning of Section 2 (q) of the Act.

The learned Single Judge held that the writ petitions were highly belated and are liable to be dismissed on that ground. He further held that in view of the declaration filed by the original owner under the Act, the land in question will be deemed to be 'urban land' and, therefore, it is not open to the purchaser to question the declaration of surplus land by claiming that the land does not fall within the definition of 'urban land' or 'vacant land'.

Along with the appeals, the appellants filed WAMP No.2433 of 2005 in W.A.No.1336 of 2005 and WAMP No.2435 of 2005 in W.A.No.1338 of 2005. By an order dated 21-7-2005, the Division Bench directed the respondents not to disturb the possession of the appellants. On notice, the respondents filed WAVMP No.3620 and 3621 of 2005 for vacating the interim orders. In the affidavit filed by the Special Officer in support of these applications, it has been averred that on receipt of the declaration filed by Sri V. Lakshmaiah under Section 6 (1) of the Act, verification report was obtained from the concerned authorities and then draft statement was issued identifying the excess vacant land measuring 18,328 square metres. The land owner did not raise any objection against the draft statement. Therefore, final order was passed on 16-9-1981 under Section 8 (4). This was followed by issuance of final statement under Section 9. Thereafter, notifications were issued under Section 10 (1) and 10 (3) respectively. After sometime, notice dated 24-12-1991 was issued under Section 10 (5) of the Act and the declarant was asked to voluntarily surrender possession of the excess land. Memos dated

28-7-1992, 27-10-1992 and 27-3-1993 were also issued to the field staff under Section 10 (6) of the Act and they took possession by duly preparing a panchanama and the land was handed over to the MRO on 16-11-1998 for disposal in accordance with law. In the affidavit of the Special Officer it was further averred that with the issuance of notification under Section 10 (3) and notice under Section 10 (5), the surplus land stood vested in the State Government free from all encumbrances, but with a view to defeat the proceedings held under the Act, the heirs of late Sri V. Lakshmaiah colluded with the appellants and sold the land to them. Still further, it has been averred that G.O.Ms.No.733 is not applicable to the appellants' case because order dated 16-9-1981 passed under Section 8 (4) had become final, since no appeal was filed against the same, and the land owner, namely, V. Lakshmaiah did not question the declaration of surplus land made by the Special Officer.

The appellants filed counter-affidavits reiterating their claim for exemption in terms of G.O.Ms.No.733 by contending that the land in question does not fall within the definition of 'vacant land' and, as such, there could be no embargo on its transfer.

Sri B. Adinarayana Rao, learned counsel for the appellants vehemently contended that the lands in question squarely fall within the scope of G.O.Ms.No.733 dated 31-10-1988, the exemption under which is automatic, as held in **Nalla Yakoob v. The Government of Andhra Pradesh**[1] and **P.S. Rao v. Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad**[2], which was upheld by the Supreme Court in **Special Officer and Competent Authority, Urban Land Ceilings, Hyderabad v. P.S. Rao**[3]. He also relied on **M.V.S. Satyanarayana v. Government of Andhra Pradesh**[4] and

Sarojini v. Government of Andhra Pradesh[5] to contend that when once a blanket exemption under Section 20(1) was granted, obtaining exemption from the authorities under the Act does not arise. He contended that so long as the proceedings under Chapter-III of the Act are not concluded, the exemption under G.O.Ms.No.733 is available not only to the declarant but also to the purchasers. Hence, he argued that irrespective of the long lapse of time since their respective purchases till the writ petitions, the appellants are entitled to the reliefs as a matter of right.

The learned Government Pleader for the respondents referred to clarificatory order by the Supreme Court in **Special Officer & Competent Authority, ULC v. P.S. Rao**[6] and **Anne Ramachandra Rao v. Government of Andhra Pradesh**[7]. He also relied on **Zarina and others v. Special Officer and Competent Authority, Urban Land Ceiling, Vijayawada**[8] and **P. Ganeswara Rao v. Secretary to Government, Revenue Department Hyderabad**[9], apart from the unreported decisions in **Writ Appeal No.57 of 2002, dated 01-04-2002**[10] and **Writ Petition Nos.17759 of 2005 and batch, dated 09-9-2005**[11]. He argued that in the light of the principles laid down in the said decisions, firstly the purchases by the appellants contrary to the provisions of the Act are null and void; secondly, the proceedings under Chapter-III of the Act attained finality much before the respective purchases by the appellants disentitling them from claiming any benefit under G.O.Ms.No.733; thirdly, the declarant alone and not the third parties can challenge

any proceedings under the Act. The learned Government Pleader, therefore, supported the dismissal of the writ petitions at the admission stage by the learned Single Judge.

We have carefully perused the record and gave our thoughtful consideration to the submissions of the learned counsel for both parties.

Before examining the facts in issue, it is necessary to refer to the provisions and principles governing such situation.

The Urban Land (Ceiling and Regulation) Act, 1976 defined 'urban land' in Section 2(o) and 'vacant land' in Section 2(q) and stated in the explanation to Section 2(o) as to what agriculture includes and what land shall not be deemed to be used mainly for the purpose of agriculture for the purpose of Section 2(o) and Section 2(q). In Chapter-III of the Act, Section 3 prohibited any person holding any vacant land in excess of the ceiling limit prescribed by Section 4. Section 5(1) provided for taking into account the extent of land transferred in any manner by any person holding vacant land in excess of the ceiling limit at any time commencing from the appointed day for calculating the excess vacant land and Sub-Section (2) of Section 5 provided that the transfer of the excess vacant land selected under Sub-Section (1) shall be deemed to be null and void. Sub-Section (3) of Section 5 prohibited transfer of any land by a person holding vacant land in excess of ceiling limit before he furnished a statement under Section 6 and notification is published under Section 10(1). Section 6(1) prescribed filing of a statement by the persons holding vacant land in excess of the ceiling limit before the competent authority and Section 8 provided for preparation of a draft statement by the competent authority in respect of the

declarant on the basis of Section 6 statement and after any enquiry. The draft statement shall be served as prescribed calling for objections within 30 days or any extended further period and the competent authority shall pass orders after giving a reasonable opportunity of being heard to the objectors. A final statement determining the vacant land held in excess of the ceiling limit by the declarant shall be made and served on the concerned persons under Section 9. After such service, a notification under Section 10(1) shall be issued calling for any claims by any person interested in the vacant land to be acquired by the State Government and after considering and determining such claims, a declaration under Section 10(3) by a notification published in the official State Gazette shall be made vesting the excess vacant land absolutely in the State Government free from all encumbrances. Any transfer in any manner between the date of Section 10(1) notification and the date of declaration under Section 10(3) was declared null and void by Section 10(4). The competent authority will give notice in writing ordering any person in possession of the vested vacant land to surrender or deliver possession to the State Government or a person authorized by the State Government within 30 days of service of notice under Section 10(5). In case of refusal or failure to comply with the same, the possession can be taken under Section 10(6) using necessary force also. Section 20 gives the power to the State Government to exempt. Under clause (a) of Sub-Section (1), the Government may exempt vacant land subject to such conditions as may be specified, if it is satisfied either on its own motion or otherwise that it is necessary or expedient in the public interest so to do having regard to the location of the land, the proposed user

and other relevant factors. Under clause (b) of Sub-Section (1), the exemption subject to such conditions can be considered if the application of provisions of Chapter-III would cause undue hardship to the person holding excess vacant land.

In exercise of the power under Section 20(1)(a), the State Government issued G.O.Ms.No.733 Revenue (UC-II) Department, dated 31-10-1988. The Government noticed that large extent of vacant lands and agricultural lands could not be used to subserve the common good, such as construction of buildings in Hyderabad, Visakhapatnam, Vijayawada, Guntur and Warangal urban agglomerations and that in spite of the scarcity of housing accommodation, the entire building activity came to a stand-still within the peripheral areas of five urban agglomerations and thought it necessary and expedient in public interest to avoid the resultant hardship and to subserve the common good to grant a general exemption and consequently stated:

> "Now, therefore, in exercise of the powers conferred under Section 20(1)(a) of the Urban Land (Ceiling and Regulation) Act, 1976 and of all other powers hereunto enabling and in supersession of all other orders issued previously in this behalf from time to time, the Government of Andhra Pradesh hereby accord:
>
> (a) exemption of the vacant land or the agricultural land which is likely to be used for non-agricultural purposes at the option of the holder thereof, or both, to a maximum extent o f five acres situated within the peripheral area as specified in column (3) of Schedule-I to the Urban Land (Ceiling and Regulation) Act, 1976 of the Hyderabad Urban Agglomeration, Visakhapatnam Urban Agglomeration, Vijayawada Urban Agglomeration, Guntur and Warangal Urban agglomerations in excess of the ceiling limit, from the provisions of Chapter III of the said

Act; and

(b) permission to transfer any such land or part thereof by a person by way of sale, mortgage, gift, lease or otherwise, to the extent of five acres of land in excess of ceiling limit, excluding the area required for roads, hospitals and for other public use."

The Government also decided to suo motu make necessary modifications in the respective master plans to give effect to this order and issued consequential orders in G.O.Ms.No.209 M.A. Housing, Municipal Administration and Urban Development (I-I) Department, dated 01-6-1989.

Considering the effect of this general exemption in **Nalla Yakoob** (1 supra), the learned Single Judge of this Court held:

"In view of issuance of G.O.Ms. No.733, dated 31-10-1988, the earlier G.O.Ms. No.323, M.A. dated 17-5-1977 has lost its significance. The liability to surrender the excess land has to be determined now in the context of G.O. Ms.No.733 Revenue (UC-2) Department, dated 31-10-1988 and not otherwise. This G.O. Ms.No.733, dated 31-10-1988 has been issued by the Government in exercise of its powers under Section 20(1)(a) of the Urban Land (Ceiling and Regulation) Act, 1976 enunciating a policy to grant exemption of vacant land in the peripheral area as specified in Column (3) of Schedule-I to the Urban Land (Ceiling and Regulation) Act, 1976 prescribing a maximum of 5 acres of land, that too, after making provision for roads, open spaces, hospitals and school. This is a general exemption granted not contemplating making any application by any individual. This exemption is automatic, provided, two conditions are complied; namely, (1) that the land is in peripheral area; and (2) that the maximum extent is five acres exclusive of the land set apart towards roads, open spaces, school and

hospital."

In P.S. Rao's case (2 supra), another learned Single Judge of this Court was considering the legal impact of G.O.Ms.No.733 and held:

> "The G.O. makes it very clear that the land situated in the peripheral area as specified in Column 3 of Schedule I to the Act of the Hyderaban Urban Agglomeration, Visakhapatnam Urban agglomeration, Guntur Urban Agglomeration, Warangal Urban agglomeration in excess of the ceiling limit is exempted from the provisions of Chapter III of the Act. At the threshold, it can be noted that what is assailed before the Court in the present Writ Petition is the validity of the appellate order arising out of the notice of the first respondent under Section 10(5) of the Act. Section 10 falls within Chapter III of the Act. On that count itself, even accepting the argument of the learned Government Pleader for Revenue that the G.O. is applicable prospectively and not retrospectively, even then the petitioner is entitled to exemption inasmuch as he has assailed the validity of the action taken under Section 10(5) of the Act calling upon him to deliver the excess land determined by the second respondent. Added to this, it is well settled position in law that once a statutory authority by exercise of its delegated power frames rules or issues notifications exercising power of exemption, such exemption would form part of the statute itself and such exemption is required to be implemented and worked out with effect from the date of the statute itself."

The Supreme Court was considering the Special Leave Petition against the above referred to decision and the decision of the Division Bench affirming the same, in the Special Officer and

Competent Authority, Urban Land Ceilings, Hyderabad's case (3 supra) and interpreting the relevant provisions of the Act, held:

> "But, the word "hold" in Section 20(1)(a) or Section 20(1)(b) cannot, in our opinion, have the same meaning that can be attributed to it as in Section 2 (l). The very definition in Section 2(l) states that the sub-section applies unless there is anything in the context which suggests a different meaning to be given. In our view, in the context of Section 20(1)(a) and Section 20(1)(b), the definition given in Section 2(l) cannot be applied. The reason is that such a construction will make Section 20 unworkable and *otiose*. We have pointed out above that it is not possible to make any meaningful application for exemption under Section 20(1)(a) or (b) unless the exact quantum of excess is determined under Section 10 after following the various provisions of the Act relating to statutory deductions and mode of computation. If the contention of the State referred to above is to be accepted, then the peculiar position will be as follows. As stated by us, before the excess is determined, a person will not be able to seek exemption because he does not know what is the actual excess land held and once the excess is determined, he cannot apply because he is not holding the excess land. Thus, the entire object of Section 20 will be frustrated. That is why we say that the definition of the words 'to hold' in Section 2(l) cannot be applied in the context of Section 20(1)(a) or Section 20(1)(b).
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> We are, therefore, unable to accept the contention of the learned Counsel for the State that an application for exemption can be maintained only before the excess is determined under Section 10. In our view, the scheme of the Act is to the contrary. The view taken by the High Court following the decision of this Court in *T.R. Thandur v. Union of India and others,* 1996 (3) SCC 690;

Darothi Clare Parreira (Smt.) and others v. State of Maharastra and others, 1996 (9) SCC 633 and *State of A.P. represented by Secretary to Government, Revenue Department, Hyderabad v. Valluru Venkateswara Rao,* 1997 (3) ALD 669 = 1997(3) ALT 417 (DB), does not call for any interference."

Accordingly, the Supreme Court did not consider it necessary to interfere with the judgment of the High Court which held that Section 20 application is maintainable even if filed after an order of vesting of excess land passed under Section10.

The State of Andhra Pradesh filed an application for clarification on the above judgment and in Special Officer and Competent Authority, ULC, Hyderabad's case (6 supra), the Supreme Court referred to the earlier reasoned order holding that notwithstanding the fact that vesting order was passed under the provisions of the Act, it would be open to the owner of the land whose land had so vested, to seek exemption under the provisions of the Act and the request for clarification as to whether if possession had not been taken pursuant to the order of vesting, the owner of the land had a right to seek exemption from the provisions of the Act under Section 20 or under Section 10 by virtue of the G.O. issued by the Government. The Supreme Court fully endorsed the view expressed by the Division Bench of the High Court, extracted as hereunder:

"It will be noticed that in the order of the Division Bench of the High Court, this position has been clearly explained. The Bench said that

"the question of retrospectivity of the exemption order does not really arise for the reason that the proceedings under Chapter III of the Act are still pending, may be at the final stage"

The Division Bench further observed that:

> "Be that as it may, in the present case, the exemption order which is of a general nature is under Section 20(1)(a), and it was issued after the vesting order under Section 10(3) of the Act was published. That the exemption could be granted even after vesting, being the proposition definitely laid down by the Supreme Court and this Court, there is no reason why such exemption shall not have the effect of taking the land out of the purview of the Act so long as the proceedings under Chapter III have not been concluded in their entirety."

The Division Bench further observed as follows:

> "This is yet another consideration which weighs with the Court to hold that the exemption granted under G.O. No.733 will be attracted to any excess land in respect of which at least the proceedings under Chapter III have not yet come to an end"."

The Supreme Court, however, did not decide the situation where possession has been taken over and where third party rights have not intervened.

Anne Ramachandra Rao's case (7 supra) is a case where the purchasers from the declarant who obtained a compromise decree for specific performance from a Civil Court, claimed exemption under G.O.Ms.No.733. The learned Single Judge firstly held:

> "The lands demonstrably fall to be considered within the provisions of the Act. In view of Section 5, the transfer of the land in favour of the petitioner is void, such a determination, of the invalidity of the transfer in favour of the petitioner, having already been made by the order of this Court dated 19-12-1989, while dismissing W.P.No.1934 of 1987 filed by

the petitioner. In the circumstances the petitioner derives no title to the land and as such possess no *locus standi* to claim exemption in respect of the said lands."

After referring to Nalla Yakoob's case (1 supra) and P.S. Rao's case (2 supra) confirmed by a Division Bench and further in Special Officer and Competent Authority, Urban Land Ceilings Hyderabad's case (3 supra), the learned Single Judge extracted the declaration of law by the Supreme Court in **Darothi Clare Parreira (Smt.) and others v. State of Maharashtra and others**[12] and was of the view that:

"In view of the aforesaid clear declaration of law, the process of consideration whether to grant exemption under Section 20, would arise only after determination of the excess land and vesting of the same in the State under Section 10. In this legal environment, any construction that exemption granted in G.O. Ms. No.733 dated 31-10-1988, relates back to the date of the Act coming into force or that the exemption is automatic without any application having to be made so however that the conditions of the said G.O. are satisfied in a given case, would be inconsistent with the scheme of the Act as enunciated by the decisions of the Supreme Court in 2000 (2) ALD 48 (SC) and (1996) 9 SCC 633 (supra)."

The learned Single Judge had also referred to **S. Vasudeva/D.P. Sharma v. State of Karnataka**[13] and **T.R. Thandur v. Union of India**[14] interpreting the provisions of Section 20 of the Act and held:

"The logical corollary of the above specific holding of the Supreme court obligates an interpretation that the blanket exemption of the

nature incorporated in G.O. Ms.No.733, dated 31-10-1988, is beyond the grant of power under Section 20. The relevant conditions precedent set out in section 20 of the Act in Clause (a) or (b) thereof need to be applied by the State Government in respect of specific cases urging grant of exemption and reasons would have to be recorded in each case where exemption is granted. The satisfaction of the State Government is susceptible to judicial review and any decision of the Government in this behalf is liable to be invalidated if the exemption granted falls foul of the public purpose underlying the grant of power in Section 20. In each case, therefore, the Government needs to balance the plurality of Legislative purposes underlying Section 20 *viz*., the location of such land, the purpose for which the land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require in a case of exemption urged under sub-section (a) or the undue hardship caused to such person falling in a case falling under sub-section (b). In either case the legislative purpose underlying the enactment of the statute *viz*., to eliminate unduly large urban holdings and concentration of urban wealth and distribution of such excess land acquired by the State to deserving persons who are the targeted beneficiaries of the ameliorative Legislation, shall have to be kept in mind, while considering exemption."

The learned Single Judge was clearly of the considered view that G.O.Ms.No.733 is beyond the scope of the grant of power under which it is purportedly issued and it cannot be given effect to as to clearly subvert the limits ordained in Section 20 of the Act and characterized the general exemption carving out a mass exception to the specific provisions of the Act in respect of a

generality of urban lands as clearly outside the scope of the grant of power under Section 20, and hence a colourable exercise of power. He consequently, held that the provisions of G.O.Ms.No.733 cannot avail the purchasers to seek relief under rubric of its presents. The learned Single Judge considered the plea of automatic exemption without the necessity of any application under G.O.Ms.No.733 to result in violating the definition of ceiling limit in Section 2 (c) read with Section 4 subverting the regulation regarding holding of excess vacant land in Section 3 and the prohibition against transfer of excess vacant land even without the necessity of consideration of individual cases on merits by the competent authorities. Consequently, the learned Single Judge held the transfer in favour of the purchasers effectuated by the agreement of sale in 1979 by the compromise decree in 1986 and the sale deed in 1986 to be invalid in view of Sections 5 and 42 of the Act and the judgment in W.P. No.1934 of 1987. He also held that an application for exemption can be made only after determination of the excess land and vesting of the same in the State under Section 10. He noted that no application for exemption under Section 20 of the Act was made by the owner and such an application can be made only by the owner and not by the purchaser, the transfer in whose favour was declared invalid by the Court in W.P. No.1934 of 1987.

In Zarina's case (8 supra), it was held after referring to the various provisions of the Act that:

> "Aforesaid provisions make it abundantly clear that as per Sections 5 (3), 10 (4) read with Section 42 of the Act, the sale in respect of the excess declared vacant land which was determined and finally vested in the Government is null and void."

Another Division Bench held in Writ Appeal No.57 of 2002 (10 supra) that where the original owner did not prefer any statutory appeal against the order declaring the land as surplus which has become final and conclusive and where the appellants purchased the land in 1997 after such declaration in 1993, any transfer of land after the Act came into force is null and void and it is not open to the appellants to challenge the declaration of surplus land assessment of the original owner.

In P. Ganeswara Rao's case (9 supra), a Division Bench of this Court was dealing with a case where the declarant failed in her challenge against the declaration of excess land under Section 8(4) and in her statutory appeal against the same, and was further unsuccessful in a writ, writ appeal and S.L.P. and then persons claiming to be purchasers of the land under sale deeds approached this Court with writ petitions. The Division Bench noted that the purchasers claiming to be in possession did not choose to come on record and agitate about their rights in the earlier proceedings and waited for so many years without fighting for their rights and the matter was decided by the Supreme Court. The Division Bench also observed that when once the rights of the owner are decided and reached finality, considering the request of the purchasers afresh amounts to reviewing the earlier proceedings. It, therefore, negatived the contentions of the purchasers.

In M.V.S. Satyanarayana's case (4 supra), the learned Single Judge was considering a case where Narayanadas, the original owner and declarant was declared to hold excess land under Section 8(4) in 1982 and he transferred 1152 square yards in favour of Kanaka Durga and another which, after changing some

hands, came to be transferred to the petitioners therein on 06-3-1993.

A notification under Section 10(1) in 1983, a notification under Section 10(3) in 1998 vesting the land with the Government and a notice under Section 10(5) on 08-7-1998 were issued. In the meanwhile, G.O.Ms. No.733, dated 31-10-1988 came, the benefit of which was claimed by the petitioners/purchasers. The learned Single Judge after referring to the provisions of the Act and the decisions in Nalla yakoob (1 supra) and P.S. Rao (2 supra), considered the petitioners to be not precluded from challenging the proceedings, if the declarant was entitled for the benefit under G.O.Ms.No.733 as the said G.O.Ms.No.733 granting automatic exemption without the necessity of any application, was issued subsequent to Section 10(1) notification in that case and as the purchase by the petitioner was subsequent to G.O.Ms.No.733. He distinguished the order of the Division Bench in W.A. No.57 of 2002 (10 supra) on the ground that the declarant therein did not choose to challenge the order passed against him and the objections and implications of G.O.Ms.No.733 were not involved.

The learned Single Judge noted that the proceedings under Chapter-III did not reach finality by the date of G.O.Ms.No.733 and hence the declarant Narayanadas or any individual claiming through him cannot be said to be not entitled for the benefit of G.O.Ms.No.733. The learned Single Judge noting the necessity to harmonize any claim for exemption under G.O.Ms.No.733 and the need for the competent authority to verify such claim, directed the petitioners to make a representation to the competent authority which shall verify on the facts and pass an appropriate order, and permitted the petitioners to approach the appellate authority under

Section 33, in case of an adverse order.

In Sarojini's case (5 supra), another learned Single Judge of this Court dealing with the question, held:

> "The cumulative and conclusive effect of the memo dated 18-4-1989, G.O.Ms. No.733 and the above decision in *Nalla Yakoob v. Government of A.P.,* 1993 ALT Supp. (1) 616 is that the Madhapur Village where the subject lands are situated is within the peripheral area and the Government by issuing G.O. Ms.No.733 had totally exempted prescribed extent of land subject to certain conditions, exercising its jurisdiction under Section 20(1)(a) of the Act.
>
> It is to be further seen that the object behind the issuance of G.O.Ms.No.733 is to meet the scarcity of housing accommodation in the urban agglomeration. It was also noted therein that the entire building activity has come to a stand still within the peripheral area of urban agglomeration. When once a blanket exemption under Section 20(1) was granted, necessity of obtaining exemption from the authorities under the Act does not arise. It amounts to saying that the lands, which were already statutorily exempted, are sought to be exempted once again. Any such demand is totally absurd and irrational and also contrary to the judgment referred to supra."

In W.P. No.17759 of 2005 and batch (11 supra), the learned Single Judge in the common order dated 09-09-2005 was considering the cases where the land owners filed declaration under Section 6(1) on which final orders were passed under Sections 8(4) and 9(1) determining the surplus vacant land which became final and where a notification under Section 10(3) vesting the surplus vacant land absolutely in the State Government free from all encumbrances and a notice under Section 10(5) for taking

possession of surplus vacant land were issued. The writ petitioners in those cases purchased various extents through registered sale deeds after Section 8(4) orders and the purchasers claimed, like in the present case, that the land is agricultural land, but is not a vacant land or urban land. The purchasers also like herein relied on the shares of the other family members of the declarant and G.O.Ms.No.733. Nalla Yakoob's case (1 supra), Sarojini's case (5 supra) and M.V.S. Satyanarayana's case (4 supra) were relied on by the petitioners. The State resisted the claims contending that the land vested in the State Government much before G.O.Ms.No.733 and the challenge without following the alternative remedy was after 24 years. The learned Single Judge firstly noted with reference to Sections 3 to 5 of the Act that the purchases by some petitioners in 1981 under registered sale deeds are void. He observed that if they were agricultural lands, the land holder has no right to sell them as house sites and the moment the land is sold for house site, it ceases to be agricultural land and attracts the provisions of the Act. The learned Single Judge further held with reference to G.O.Ms. No.733 that a person who purchased the land governed by the provisions of the Act after coming into force of the Act is not a person who can be called to hold the land under Section 2 (l) in view of such transactions being void by reason of Sections 3, 5(1) and 5(2). Consequently, the learned Single Judge held:

> "When the Government issued G.O.Ms. No.733, they were aware of this clear distinction. That is the reason why Para No.6 (a) of G.O.Ms. No.733 exempts the vacant land, which is likely to be used for non-agricultural purposes at the option of the holder.
>
> It indicates two things. First, the land remained and

continued to remain till October, 1988 as agricultural land in the peripheral area and secondly, the holder of such land wants to convert it into land for non-agricultural purpose. If, by the time of issue of G.O.Ms. No.733 dated 31-10-1988, agricultural land in peripheral area ceased to be as such, the Government Order has no application. In this case, admittedly, the declarants sold the land prior to coming into force of G.O.Ms. No.733 dated 31-10-1988. However, in W.P. No.18134 of 2005, the petitioners purchased the land under registered sale deeds in 1993 and therefore, their case stands on a different footing. This has to be considered by authorities under the Act. The case of the writ petitioners in other writ petitions is concerned, they cannot be heard to say that the land they purchased prior to 31-10-1988 stands exempted from the provisions of the Act. In all the decisions cited by the learned counsel for the petitioners, as rightly pointed out by the learned Assistant Government Pleader, the original holders of the land who filed declarations, sought the relief from this Court to the effect that without anything else the land stands exempted from the provisions of the Act by a reason of G.O. Ms. No.733 and G.O.Ms. No.209. In the present cases the facts are different."

The learned Single Judge, however, referred to G.O.Ms. No.455 whereunder the Government introduced the scheme for regularization of sale transactions of the land covered by the provisions of the Act, which benefit can be availed by the petitioners.

Reverting to the factual context in the present writ appeals, the admitted facts are that Velpula Lakshmaiah filed declaration under Section 6 (1) of the Act on 12-8-1976 in respect of Ac.5-04 guntas of land at Shayampet village within Warangal Urban

Agglomeration as 'kartha' of Hindu joint family claiming the land to have been acquired with joint family funds and efforts. He showed his wife, four major sons and two minor grand children as members of the family and four major sons as the persons interested. He sought for exemption under Section 20 of the Act as cultivation of the agricultural land was their only source of livelihood. The declaration covered Ac.2-05 guntas in survey No.182/4, out of which the appellants herein claimed to have purchased 3,448.50 square yards each. The declarant did not state what lands he proposes to surrender, if found to be in excess.

The declaration was referred to the Special Deputy Tahsildar and Survey for verification and report and based on the verification report, a draft statement was prepared showing a total extent of 20,328 square metres, out of which 2,000 square metres were allowable area and 18,328 square metres were provisional excess. It was served on the declarant on 13-10-1979 along with a notice under Section 8 (3) of the Act calling for objections within 30 days and the declarant did not file any objections. Then final orders under Section 8 (4) were passed and final statement under Section 9 was issued on 16-9-1981, before which notices for hearing on 10-4-1981 and

03-9-1981 were issued to the declarant and he was set ex parte due to his absence. Then notification under Section 10 (1) of the Act was issued on 16-12-1981 for information of the general public about the excess vacant land, calling upon any person interested to submit his claims. The notification was published in the Andhra Pradesh Gazette on 07-01-1982. No claims were received and the notification under Section 10 (3) of the Act was issued on 06-8-

1991 and was published in the Andhra Pradesh Gazette on 28-8-1991 notifying for information of the general public that the excess vacant land shall be deemed to have been acquired by the State Government and to have vested absolutely in the State Government free from all encumbrances with effect from the date of its publication. Then a notice under Section 10 (5) of the Act was stated to have been issued on 24-12-1991. It was again issued on 17-6-1992 ordering the declarant to deliver possession of the surplus land to the Special Deputy Tahsildar, Urban Land Ceilings, Warangal within 30 days of service of notice, failing which possession will be taken under Section 10 (6) of the Act by use of force as may be necessary. The notice was personally served on Sri V. Lakshminarayana, son of Lakshmaiah, one of the vendors of the appellants, on 26-6-1992 under an acknowledgement with his signature on the back of the notice. Thereafter, the Special Deputy Tahsildar, Urban Land Ceilings, Warangal was directed by a memo dated 28-7-1992 to take possession of the excess land with the assistance of a Surveyor and handover possession to the Mandal Revenue Officer, Warangal immediately, as the declarant failed to deliver possession. Such memos were stated to have been repeated on 27-10-1992 and

27-3-1993.

The appellants claimed to have purchased 3,448.50 square yards of land each in survey No.182/4 of Shayampet village under registered sale deeds dated 26-8-1997 from the four sons and two grand sons of Velpula Lakshmaiah who was dead by then. The vendors included Sri Velpula Lakshmi Narayana, on whom the notice under Section 10 (5) of the Act was personally served. The

sale deeds contained a declaration by the vendors as if they availed the exemption granted under G.O. Ms. No.733 Revenue (U.C.I) Department, dated 31-10-1988 in respect of AC.2-05 guntas at Shayampet village in the peripheral area of Warangal Urban Agglomeration and sold the land. They undertook to be liable for prosecution and for declaration of the sale as null and void, if the transfer of the land were to be subsequently found to be in violation of the Act or G.O. Ms. No.733. After execution of the sale deeds reciting delivery of possession of the lands sold to the purchasers on the same day, the appellants were silent till the filing of the writ petitions dated 03-7-2005.

On 16-11-1998 a Panchanama was recorded that the Special Deputy Tahsildar, Urban Land Ceilings, Warangal got the surplus lands surveyed, identified, measured and boundaries fixed, took possession and delivered possession to the Mandal Revenue Inspector. A location sketch was duly prepared and enclosed and 8,159 square metres in survey No.182/4, which included the lands claimed by the appellants, were also covered by the said panchanama.

The appellants claim their sudden discovery about all the earlier proceedings to be due to a visit by the subordinates of the Mandal Revenue Officer, Hanamkonda to the subject land and their taking measurements. There is no material on record to corroborate the alleged visit.

Velpula Lakshmaiah and his four major sons were claimed to be members of Hindu undivided joint family, of which late Lakshmaiah was the 'kartha' and if so, when notices under Section 8 (3), notices for hearing before final orders under Section 8 (4) and notices under Section 10 (5) were served on Lakshmaiah, his

major sons should have had information of the same in the ordinary and natural course of human affairs. At any rate, after personal service of the notice under Section 10 (5) on Sri V. Lakshmi Narayana, one of the major sons, on 26-6-1992, they definitely had positive knowledge of the proceedings under the Act, though no separate notices might have been issued to the four major sons of Lakshmaiah. However, none of the family members of Lakshmaiah had ever raised any objection or claimed any relief till today regarding the surplus land. The complaint of the appellants that they were not given any notices is ex facie untenable, as their purchases were on 26-8-1997, while the second notice under Section 10 (5) of the Act was on 17-6-1992 and even the last memo issued to the Special Deputy Tahsildar to take possession was on 27-3-1993, at which time the authorities could have never conceived the probability of purchase of any portion of surplus land by the appellants four years five months later. When, in accordance with the statutory procedure, all the notices were duly served on the declarant including once on his son and all the notifications were duly published including in the State Gazette at different stages, the declarant or any other person claiming to be interested can be safely presumed to have had actual notice or have to be attributed with constructive notice. In the absence of any material on record to discredit the panchanama, dated 16-11-1998 for taking possession under Section 10 (6) of the Act, the silence of the appellants claiming to be in possession and enjoyment by virtue of the purchase on 26-8-1997 till filing of the writ petitions on 03-7-2005, militates against seeking any relief in equity. Thus, the declarant or any of his family members did not so far raise any objection or seek any

relief regarding whole or part of the surplus or excess land of Velpula Lakshmaiah including about any applicability of G.O. Ms. No.733 to such land. It is only the appellants claiming to be purchasers that approached this Court.

In the cases of **Nalla Yakoob v. The Government of Andhra Pradesh, P.S. Rao v. Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad, etc.,** (supra), it was the declarants that approached the Court for relief and in Writ Appeal No.57 of 2002 the Division Bench specifically held the purchasers of land after it was declared surplus, to be incompetent to challenge the declaration of surplus land of the original owner, both as any transfer of land after the Act is null and void and as the declaration of surplus in the absence of any statutory appeal by the original owner became final and conclusive. The fact situation in the present case is similar. This decision was attempted to be distinguished in **Sarojini's case**
(5 supra), as the purchase therein was subsequent to G.O. Ms. No.733, which signified automatic exemption. However, in **Zarina's case** (8 supra) also it was made abundantly clear that such sale of excess declared vacant land vested in the Government is null and void as per Sections 5 (3), 10 (4) and 42 of the Act. In that case also, proceedings up to Section 10 (5) of the Act were unquestioned and became final. In **P. Ganeswara Rao's case** (9 supra) also, the alleged purchasers stepped in claiming purchases in 1978 and 1979 much earlier to the service of Section 10 (5) notice on the land owner on 03-9-1985 and the taking over of possession on 09-8-1996. They filed writ petitions after the land owner failed up to the Supreme Court and the Division Bench categorically held that when once the rights of the owner were

decided and reached finality, considering the request of the purchasers afresh amounts to reviewing the earlier proceedings and, therefore, upheld the dismissal of the writ petitions by the learned Single Judge.

In the common order in W.P. No.17759 of 2005 and batch dated 09-9-2005 also, the learned Single Judge firstly held any purchaser of such land after the Act to be not a holder of the land within the meaning of Section 2 (l) and secondly noted that in **Nalla Yakoob's case** (1 supra) and **P.S. Rao's case** (2 supra), the original holders of the land sought relief from the Court under G.O. Ms. No.733. The learned Single Judge observed that G.O. Ms. No.733 indicates that the holder of such land desiring to convert it into land for non-agricultural purpose is required for exemption. Therefore, if the holder of the land by 31-10-1988, the date of G.O. Ms. No.733, has no intention for such conversion, the applicability of the exemption thereunder becomes doubtful, apart from the question whether a purchaser subsequent to G.O. Ms. No.733 can claim to be a holder of such land.

In fact, in the clarificatory order in **Special Officer and Competent Authority, Urban Land Ceiling v. P.S. Rao** (6 supra), the Supreme Court made it clear that in its earlier order the Court held that it would be open to the OWNER OF THE LAND whose land had vested in the Government to seek exemption under the Act. It was clarified with reference to the observations of the Division Bench of this Court that so long as the proceedings under Chapter-III have not been concluded in their entirety, the OWNER OF THE LAND had a right to seek exemption. The Supreme Court made it clear that it was not deciding the situation where possession has been taken over and where third party

rights have not intervened. Whether a purchaser from the owner after vesting had a right to seek exemption under G.O.Ms. No.733, was thus uncovered.

In **Anne Ramachandra Rao's case** (7 supra), the learned Single Judge after an exhaustive consideration of the questions of law held such purchase to be invalid in view of Sections 5 and 42 of the Act and that the determination of excess vesting being in respect of the original owner, an application under Section 20 for exemption could only be made by the original owner and not by the purchaser in particular in view of the transfer being invalid.

Though it was held that no formal application seeking exemption is required to avail the benefit of G.O. Ms. No.733, the learned Single Judge in **M.V.S. Satyanarayana's case** (4 supra) had pointed out that a harmonious approach to enable availament of benefit by the individuals without a formal application and verification of such claim by the competent authority is required to keep in tact the rights of the individuals and ensure compliance with the provisions of the Act. The learned Judge, therefore, adopted a course of directing the claimants to submit a representation to the competent authority, which shall be duly verified and ordered. The appellants herein made no such representation to enable the competent authority to verify their claims, even if the exemption under G.O. Ms. No.733 were to be considered to be automatic.

Thus, the decisional law is to the effect that the exemption under G.O. Ms. No.733 is automatic notwithstanding vesting of surplus land in the Government, if the proceedings under Chapter-III of the Act remained inconclusive by 31-10-1988, the date of G.O. Ms. No.733. However, the preponderance of judicial opinion

is that any sale of the surplus land after the Act is null and void and it is only the original owner that can seek exemption under G.O. Ms. No.733 and not any purchaser after the Act. If the statutory proceedings become final and conclusive, in the absence of any statutory appeal or objection by the original owner, the purchaser under a null and void sale cannot challenge such proceedings.

By the date of purchase by the appellants on 26-8-1997, all the proceedings under Chapter-III of the Act including acquisition of vacant land in excess of ceiling limit under Section 10 were completed with the last notice under Section 10 (5) on 17-6-1992 and the last memo under Section 10 (6) directing the field staff to take possession on 27-3-1993. Only the ministerial act of taking physical possession happened on 16-11-1998 and hence it may not be open to the appellants to seek any exemption under G.O. Ms. No.733. The appellants whose purchase was after the Act and after the proceedings under Section 10 (6) cannot challenge the earlier statutory proceedings on the strength of their purchase which is null and void. Even otherwise, when the original owner or any of his legal representatives never raised any objection or claim so far, including any benefit under G.O. Ms. No.733, it is not open to the appellants to make any such claim. The contention that the land did not fall under 'vacant land' under Section 2 (q) or 'urban land' under Section 2 (o), is not open to the appellants when the original owner himself filed the declaration on the premise that the land is urban vacant land and never retracted from the same. The alleged bona fide belief of the appellants in the land being exempt under G.O. Ms. No.733 is rendered doubtful by their silence since their purchase in 1997 and even after the officials

taking over possession in 1998 till 2005. Irrespective of whether the abnormal and unexplained delay in approaching the Court defeats the request of the appellants for the exercise of the equitable jurisdiction of the High Court under Article 226 of the Constitution of India or not, the appellants have to fail for the other reasons elaborated above. Hence, the impugned orders of the learned Single Judge dismissing the writ petitions at the admission stage need no interference.

For the foregoing reasons, the writ appeals are dismissed.

As a sequel to the dismissal of the appeals, W.A.V.M.P. No.3620 of 2005 and W.A.M.P. No.2433 of 2005 in W.A. No.1336 of 2005 and W.A.V.M.P. No.3621 of 2005 and W.A.M.P. No.2435 of 2005 in W.A. No.1338 of 2005 are dismissed as infructuous.

G. BHAVANI PRASAD, J

Date: -6-2006

G.S. SINGHVI,

C.J.

Svv / svs

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[1] 1993 ALT Supp. (1) 616

[2] 1998 (4) ALD 697

[3] 2000(2) ALD 48 (SC)

[4] 2004(1) ALD 256

[5] 2004(3) ALD (NOC) 216

[6] (2000) 7 SCC 213

[7] 2000(4) ALD 377

[8] 2002(5) ALD 779 (D.B.)

[9] 2003(4) ALD 262 (DB)

[10] W.A. No.57/2002, dated 01-04-2002

[11] W.P. Nos.17759/2005 and batch, dt.9-9-2005

[12] (1996) 9 SCC 633

[13] (1993) 3 SCC 467

[14] (1996) 3 SCC 690